

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Appeal No. 14738, of Advisory Neighborhood Commission 6E, as amended, pursuant to 11 DCMR 3200.2 and 3105.1, from the decisions of the Acting Zoning Administrator made on October 6, 1987, in issuing Building Permit No. B-324868, and on November 27, 1987, in issuing Certificate of Occupancy No. B-151911, to the effect that Domino's Deli-Pizza Delivery be considered a restaurant within 25 feet of an R-4 Residence District at premises 1500 Pennsylvania Avenue, S.E., (Square 1077, Lot 809).

HEARING DATE: July 20, 1988, and September 14, 1988

DECISION DATE: October 5, 1988

FINDINGS OF FACT:

1. This appeal challenges the decision of the Zoning Administrator that a Domino's pizza franchise falls outside the category of a fast-food restaurant, thereby allowing the establishment of the franchise in a C-2-A Zone District, and on a lot that is within 25 feet of a residential district, and not separated from that district by an alley.

2. Building Permit No. B-324868, issued on October 6, 1987, authorized renovation and improvements at 1500 Pennsylvania Avenue, S.E., Lot 809, Square 1077, to be occupied by the proposed use "Delicatessen-Pizza Delivery."

3. Certificate of Occupancy B-151911, issued November 27, 1987, authorized Domino's Pizza, Inc., to operate a pizza franchise in the use category "Delicatessen No Seating", at 1500 Pennsylvania Avenue, S.E., Lot 809, Square 1077.

4. The franchise delivers pizza, but does not have a drive-through.

5. The floor area that is allocated and used for customer queuing consists of all of the floor area of the pizza franchise that is accessible to the public.

6. The pizza that the franchise sells is not prepared or packaged before the customer places an order.

7. The franchise sells pizza that is ready for consumption without further preparation by the customer.

8. The pizza franchise serves the pizza in a cardboard box that is disposable.

9. The pizza franchise has no seats or other facilities for consumption of the product on the premises.

10. To assist in the interpretation whether the pizza franchise would qualify as a delicatessen, and therefore be excluded from the definition of fast food restaurant, the Zoning Administrator referred to the definition of delicatessen in the "Food and Food Operations Regulations," 23 DCMR 9902, which definition reads, "Delicatessen - Any business where food, drink, or refreshments are cooked, prepared and sold for consumption other than on the premises."

CONCLUSIONS OF LAW:

1. The definition of "fast food restaurant" in 11 DCMR 199 reads as follows:

Restaurant, fast food - a place of business devoted to the preparation and retail sale of ready-to-consume food or beverages for consumption on or off the premises. A restaurant will be considered a fast food restaurant if it has a drive-through. A restaurant will be considered a fast food restaurant if the floor space allocated and used for customer queuing self-service for carry out and on-premises consumption is greater than ten percent (10%) of the total floor space on any one (1) floor which is accessible to the public, and it exhibits one (1) of the two (2) following characteristics:

- (a) At least sixty percent (60%) of the food items are already prepared or packaged before the customer places an order; and
- (b) The establishment primarily serves its food and beverages in disposable containers and provides disposable tableware.

(This definition does not include an establishment known as retail grocery store, convenience store, ice cream parlor, delicatessen, or other businesses selling food or beverages as an accessory use, or for off-premises preparation and consumption.)

2. Title 11 does not define the word "delicatessen".

3. Webster's Unabridged Dictionary defines delicatessen as follows:

1: ready-to-eat food products (as cooked or processed meats, cheeses, prepared salads, canned foods, preserves, relishes)

2...: a store where delicatessen are sold either to be taken out or to be eaten on the premises (as in sandwiches)

4. Reconciliation among the various elements of the definition of "fast food restaurant" in 11 DCMR 199, and of those elements with the dictionary definition of delicatessen, is an exercise that involves a troublesome degree of ambiguity.

5. The delivery service that the pizza franchise provides does not fulfill the drive-through criterion.

6. The floor space of the pizza franchise that is allocated and used for customer queuing far exceeds ten percent of the floor area that is accessible to the public.

7. The operation of the pizza franchise does not exhibit the characteristic of prior-to-order preparation or packaging of sixty percent of the food it sells.

8. The pizza franchise exhibits the characteristic of primarily serving its food in disposable containers and providing disposable tableware.

9. On the facts of this case, the pizza franchise meets the criterion of the preparation and sale of ready-to-consume food, and the two criteria that are set forth in conclusions of law numbered 6 and 8 and which operate in the conjunctive with each other. Accordingly, in this case, the Board need not decide if a business would be a fast food restaurant if it met only the ready-to-consume criterion.

10. By its terms, the parenthetical exclusion of retail grocery stores and other businesses, including delicatessens, applies to the entire definition.

11. The definition of delicatessen in Title 23, DCMR, is substantially broader than the definition of the term in the unabridged dictionary.

12. If the Board were to apply the Title 23 definition of delicatessen to the parenthetical exclusion, the result would be that 11 DCMR 199 would in effect define a fast food restaurant as a place of business that sells ready-to-consume food or beverages for consumption on or off the premises, except if the sale is exclusively for consumption other than on the premises. The Board doubts that the Zoning Commission intended to define the use in that way.

13. The definition of delicatessen that is contained in the unabridged dictionary would exclude a relatively narrow category of use from the definition of fast food restaurant, one that would more reasonably be excluded than the Title 23 category.

14. Based upon the foregoing, the Board has reservations about the reference by the Zoning Administrator to Title 23 for the interpretation of words that are used in Title 11, but not defined therein. The Zoning Commission has explicitly directed that reference should be made to Webster's Unabridged Dictionary. District of Columbia licensing provisions and health regulations have a substantially different regulatory focus than do the Zoning Regulations.

15. The Board urges the Zoning Administrator to exercise restraint in reference to titles of the District of Columbia Municipal Regulations other than Title 11 for the interpretation of words used in Title 11. The Zoning Regulations do not provide for such reference.

16. In the particular circumstance of the definition of fast food restaurant, the Board concludes that it is not clear that the reference to Title 23 for a definition of delicatessen produced an erroneous result. That is, in light of the inherent and troubling ambiguity of the definition of "fast food restaurant," the Board concludes that it was reasonable for the Zoning Administrator to refer to Title 23 in an effort to resolve that ambiguity.

17. The Zoning Administrator reasonably determined that the pizza franchise is properly classified as a delicatessen, and is therefore not a fast food restaurant.

Based upon the foregoing, the Board hereby ORDERS that the appeal be DENIED and the decision of the Zoning Administrator be SUSTAINED.

Vote: 4-0 (William F. McIntosh, Charles R. Norris, and Carrie L. Thornhill to deny the appeal; Elliott Carroll to deny by proxy; Paula L. Jewell not present, not voting).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:

  
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EDWARD L. CURRY  
Executive Director

FINAL DATE OF ORDER: JUN 27 1990

UNDER 11 DCMR 3103.1 "NO DECISION OR ORDER OF THE BOARD  
SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL  
PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE  
BEFORE THE BOARD OF ZONING ADJUSTMENT."

appeal14738 BJW43

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



APPLICATION NO. 14738

As Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that a letter has been mailed to all parties, dated JUN 27 1990, and mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

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A handwritten signature in dark ink, appearing to read "E. L. Curry", is written over a horizontal line.

EDWARD L. CURRY  
Executive Director

DATE: JUN 27 1990

attestation14738/PJW43